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Senator Shirley Meyer
Chair of Interim Judicial Process Committee
4031 Hwy 22 S
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RE: SB # 2284

Ms Meyer

Since it has just rained, and since I was doing some research on the Internet concerning NDCC 28-24-02, I came upon the fact that your committee is researching the issue of exemptions under execution.

Enclosed is a lawsuit that I filed on June 4, 2008 to protect and recover the exemptions that the local sheriff had denied to me last year. By virtue of these denied exemptions, I am completely without personal and real property. My employment prospects at age 57 are non-existent. I am indeed destitute and on welfare, as I receive food stamps and heating assistance.

Your mission is well founded, as the existing statutes, particularly the amount of the exemptions, are hopelessly outdated. If it is the intent of the legislature to maintain the scope and spirit of the exemptions found in NDCC 28-22, then serious changes need to be made.

The basis for these exemptions arose from the situation that existed during the great depression of the 1930's. At that time nobody had any money due to the drought and the collapse of the banking system. The current situation is little different.

What has changed is the devaluation of the American currency. Farming is still a high risk and low margin business. While crop insurance and disaster assistance are now available, existing policies/programs have been insufficient to maintain loans and retire debt. Cheap food has its ultimate price.

With that being said let me make some suggestions:

Increase the Homestead exemption NDCC 47-18 to 640 acres for agricultural purposes. An alternative would be to exempt a certain dollar amount from sale, say \$250,000. With this exemption set to this level, this would force the lender to refinance rather than foreclose. Since in my case I assigned the rent from my land to my lender, and he has not collected that rent, there still is a serious matter of double recovery. A complaint to the Department of Financial Institutions was essentially ignored.

Increase the absolute exemptions NDCC 28-22-7 to reflect at least minimum wage or poverty level income as defined by social services (provisions for one year), and the recent high costs of gas diesel and propane (fuel required). A new category needs to be introduced and that is supplies such as seed and fertilizer.

As for the tools of trade, every farmer has both tools and farm equipment. The way the law is construed these are mutually exclusive items when both should be available. The dollar amount of these items needs to be increased as it is common for a set of junky equipment to exceed \$100,000

There needs to be penalty imposed on the creditor for the violation of these absolute exemptions. A setoff of the debt for every exemption denied and the debtor retains title and possession is reasonable and appropriate. It makes sense that if a producer is allowed to continue working then he has a chance of retiring his debts and still providing for retirement.

The Sheriff needs to bear a greater responsibility in the protection of the rights of a debtor under execution. In my complaint I have asked the court for treble damages. I am certain that the court will reject my demand and it will be appealed.

Speaking of appeal, on my foreclosure, the court has endorsed the confirmation of sale but has not yet entered that order, which precludes me from mounting an appeal to the Supreme Court.


Somehow the statutes have to be changed to actually force the district court to review the details of a judicial sale. The judge that confirms the sale must bear some liability for his actions.

The one-year statute of limitations for redemption should start running from 60 days after the Notice of Entry of Order Confirming Sale, not as the current law prescribes. If it is to be policy to prevent agricultural producers like me from being reduced to absolute poverty then this requirement is necessary to protect my constitutional rights.

It is way too easy to be deprived of appeal rights and lose possession of land and machinery with the current law.

If you have further questions, I would be happy to meet with you and expand on my situation further.

Sincerely:


Edward J Tarnavsky

